IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2227 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

JAGSI CHATRUBHUJ MEHTA

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 2227 of 2002
MR YOGESH S LAKHANI for Petitioner No. 1
MR SAMIR DAVE AGP for Respondent No. 1-2,4
MS PJ DAVAWALA Addl. Central Govt. Standing Counsel for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/04/2002

ORAL JUDGEMENT

1. The petitioner has filed the present petition for quashing and setting aside the detention order dated 21-1-2001 passed by the respondent no. 1 - District Magistrate, Kutch-Bhuj against him.

2. The respondent no. 1 passed the detention order dated 21-5-2001 by sending him to Himmatnagar Sub-Jail, Himmatnagar. Thereafter, the petitioner filed the present petition on various grounds. When the matter came up for hearing before this Court, Rule was issued by this Court and pursuant to the same the Mr. Samir Dave ld. A.G.P. appeared on behalf of the respondent State. Thereafter, the affidavit-in-reply was filed by the Dy. Secretary, Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department. Counter affidavit is also filed by the under Secretary, Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Affairs. Both these affidvaits are taken on record of this case.

3. I have heard Mr. Y.S. Lakhani, learned counsel for the petitioner, Mr. Samir Dave, ld. A.G.P. for respondents No. 1, 2 and 4 and Ms. P.J. Davawala learned Addl. Central Govt. Standing Counsel for the respondent no. 3. I have also perused the material on record.

4. Learned counsel for the petitioner has raised various grounds in the petitioner but while arguing the matter he has restricted only on the ground of delay in considering the representation of the petitioner. He has contended that the petitioner has sent his representation to the District Magistrate, Kutch-Bhuj on 2-2-2002 and the same has been rejected on 5-2-2002 and the said decision was informed him vide letter dated 11-2-2002. He has also argued that the impugned order of detention was passed by the respondent no. 1 on 21-5-2001 and the same was required to be approved by the authority concerned within 12 days which were over on 1-6-2001 and therefore the detention order in question has not been approved within stipulated time and hence the detention order is illegal and bad in the eye of law. In support of his case, he has relied on decision of this Court reported in 1994 (2) G.L.H. (U.J.) 11, wherein it is held that "the Detaining authority has no power to revoke order of detention after it is confirmed by the State Government even though the representation is addressed to it".

5. From the affidavit-in-rely it clear that the petitioner has sent his representation to the respondent no. 1 on 2-2-2002 and the same was received by the authority concerned on 5-2-2002 and decision regarding rejection of the representation of the petitioner was sent to him vide dated 11-2-2002. So, there is delay in

communicating the said decision. In these circumstances, the detention order is illegal and bad in the eye of law and hence the same deserves to be quashed and set aside.

6. For the above stated reasons, this Special Civil Application is allowed and the impugned order dated 21-5-2001 passed by the District Magistrate, Kutch-Bhuj is hereby quashed and set aside. The petitioner - detenu Jagsi Chaturbhuj Mehta is ordered to be released forthwith, if he is not required in any other case. Rule is made absolute, with no order as to costs. D.S. is permitted.

(R. P. Dholakia, J.)

/JVSatwara/